

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMEL CLARK,

Plaintiff,

-v-

9:17-CV-366
(DNH/TWD)

GERALD GARDNER, Lt. of Corrections
Officers, Shawangunk Correctional Facility;
JOSEPH SMITH, Superintendent,
Shawangunk Correctional Facility; LT.
PALEN, Lt. of Corrections Officers,
Shawangunk Correctional Facility; RONALD
FARAH, Plant Superintendent of Facility
Maintenance, Shawangunk Correctional
Facility, formerly known as Farra; ANTHONY
ANNUCCI, Commissioner of the New York
State Dept. of Corrections; D. VENETTOZI,
Director of Special Housing and Inmate
Disciplinary Program; DAVE DEGRAFF,
Corrections Officer, Shawangunk
Correctional Facility; GEORGE
KARAMANOS, Corrections Officer,
Shawangunk Correctional Facility, formerly
known as Caramonos; MCELROY,
Corrections Officer, Shawangunk
Correctional Facility; SERGEANT
HARRISON, Shawangunk Correctional
Facility; and PINGOTTI, D.S.S.,

Defendants.

APPEARANCES:

JAMEL CLARK
Plaintiff pro se
99-A-0475
Elmira Correctional Facility
P.O. Box 500

Elmira, NY 14902

BARBARA D. UNDERWOOD
Attorney General for the State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

DAVID A. ROSENBERG, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Jamel Clark brought this civil rights action pursuant to 42 U.S.C. § 1983. On July 5, 2018, the Honorable Thérèse Wiley Dancks, United States Magistrate Judge, advised by Report-Recommendation that defendants Gardner, Pingotti, Palen, Smith, Venettozi, and Annucci's partial motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) be granted in part and denied in part. Defendants filed timely objections to the Report-Recommendation.

Based upon a de novo review of the portions of the Report-Recommendation to which defendants objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

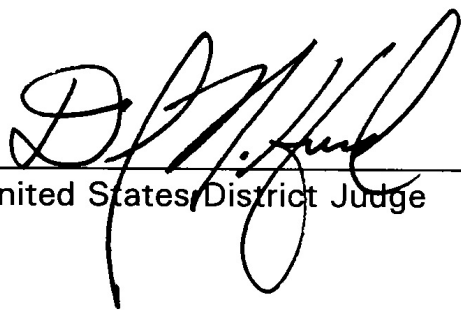
1. Defendants' partial motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) is GRANTED in part and DENIED in part;

2. Defendants' partial motion to dismiss for failure to state a claim is GRANTED regarding defendant Annucci's personal involvement in plaintiff's Fourteenth Amendment due process claim as it relates to the sixth and final disciplinary sanction but plaintiff is granted

leave to amend to allege Annucci's personal involvement in the sixth and final disciplinary sanction; and

3. Defendants' partial motion to dismiss for failure to state a claim is DENIED as to plaintiff's alleging of an actual liberty interest as it pertains to his Fourteenth Amendment due process claim.

IT IS SO ORDERED.


United States District Judge

Dated: August 30, 2018
Utica, New York.